# Nina Neg

# Prep Components

# Util NC

## 1NC

Omitted

# Endowments DA

## 1NC

#### State funding for public colleges is decreasing in the squo, causing increased reliance on endowments from private donors.

**Press:** Press, Alex [The Nation] “Silence on Campus: Contingent Work and Free Speech.” *The Nation.* February 2016. RP

**Explaining the role financial needs play in decisions to censor faculty in public higher education, Robinson argues, “As public funding is cut, the administration becomes more reliant on private donors. These donors then use that leverage, threatening to withdraw donations if an administration doesn’t act.” The problem is worsening as public funds for higher education are drying up across the country, according to a recent report by the Center on Budget and Policy Priorities. As this money dwindles, administrations turn to wealthy donors, creating the conditions under which prestigious donors can sway administrator’s decisions** on how to respond to controversial faculty, if those faculty can get hired in the first place.

#### The aff lets in all speech, causing donors to withdraw funds.

**Macdonald:**G. Jeffrey MacDonald Correspondent of The Christian Science Monitor. Donors: too much say on campus speech? ; Colleges feel more pressure from givers who want to help determine who'll be speaking on campus. The Christian Science Monitor [Boston, Mass] 10 Feb 2005: 11.

According to Hamilton President Joan Hinde Stewart, **angry benefactors threatened to quit giving if the Clinton, N.Y., college were to give a podium to the University of Colorado professor who had likened World Trade Center workers to Nazis in a 2001 essay**. In doing so, they employed an increasingly popular tactic used at colleges in Utah, Nevada and Virginia with mixed degrees of success last fall in attempts to derail scheduled appearances by "Fahrenheit 9-11" filmmaker Michael Moore. **Although demanding givers are nothing new, observers of higher education see in recent events signs of mounting clout for private interests to determine which ideas get a prominent platform on campus and which ones don't**. Faced with such pressures, administrators say they're trying to resist manipulation. Mr. Hamilton canceled Mr. Churchill's speech, Stewart said, only after a series of death threats pushed the situation "beyond our capacity to ensure the safety of our students and visitors." **Yet in an age when financiers increasingly want to set the terms for how their gifts are to be used, those responsible for the presentation of ideas and speakers seem to be approaching them much like other commodities on campus. "People are wanting their values portrayed and wanting institutions to do exactly what they want them to do,"** said Dr. Wes Willmer, vice president of university advancement at Biola University in La Miranda, Calif., and a frequent writer on the topic of university fundraising. "They're not giving for the common good. They're giving because they want to accomplish something, and that plays out in the speaker realm as well." Pressure to reshape the landscape of ideas is coming from various corners. **At the University of Nevada, Reno, seven-figure donor Rick Reviglio threatened this fall to stop giving altogether unless the university, which had invited Mr. Moore, would instead arrange for the filmmaker to debate a prominent conservative**. The university declined his $100,000 offer to stage the event. In California and Virginia, state lawmakers helped persuade presidents at California State University San Marcos and George Mason University, respectively, that upwards of $30,000 for Moore's appearance would constitute **an** "inappropriate" use of state funds on the eve of an **election**. The San Marcos campus hosted the **event** anyway, however, after a student group raised its own money to sponsor it. In the case of Mr. Churchill, the controversy rages on. Since Hamilton's decision, administrators have nixed Mr. Churchill's scheduled appearances at Wheaton College (Mass.), Eastern Washington University and even his own institution, the University of Colorado at Boulder. Security concerns were officially to blame in each case, although activists who opposed Churchill's message have offered another explanation. "**Everything comes back down to money, and they were worried about funding at Hamilton College**," says Bill Doyle, outreach director for the World Trade Center United Families Group. He said survivors who lost loved ones in the 9/11 attacks had lobbied Hamilton's four largest corporate donors to withhold future gifts if Churchill were allowed to speak. "**You have all these rich corporations throughout the world and the country. Perhaps they'll take a look at what they're funding," says Doyle, especially in terms of paid speakers who "promote hate."**

#### High endowments allow colleges to provide scholarship – that’s key to allowing minorities on campus.

**Freedman:** Freedman, Josh [Contributor, The Atlantic] “Why American Colleges Are Becoming a Force for Inequality.” *The Atlantic.* May 2013. RP

**Not all colleges, however, would need to raise tuition drastically to pay for a larger number of low-income students. Schools with large endowments can cover the shortfall in tuition by drawing money from these reserves**. But keeping tuition constant and paying more from the endowment is only an option for schools with [monstrous endowments](http://www.theamericanconservative.com/articles/paying-tuition-to-a-giant-hedge-fund/). **Many writers cite Amherst College as a success story, which has "aggressively recruited poor and middle-class students in recent years" and has increased its share of low-income students. But Amherst has a very large endowment for the size of its student body. Its strategy is only viable when backed with an endowment of more than three quarters of a million dollars per student from which it can draw additional funds to cover its costs while remaining competitive in its levels of spending.** Amherst is better than others, however. Some schools that already do have sizable endowments and could increase aid are instead decreasing it. Cornell, which has an endowment of about $5 billion, took $35 million from its endowment in 2009-2010 to fund financial aid. It is now [changing its policy](http://www.bloomberg.com/news/2012-08-09/cornell-mit-scale-back-aid-even-as-endowments-rise.html) to draw less from the endowment, which includes lowering its financial aid policies. For GW, with $1.33 billion in its endowment (about 1/18 of Amherst's per student), it's more difficult to use the endowment as a primary backstop. GW only has around 11.7 percent of its endowment, or $155 million, [available for student aid](https://giving.gwu.edu/sites/giving.gwu.edu/files/downloads/endowment_report.pdf). As such, GW - and most selective schools - would only be able to preserve student revenues by raising tuition.

#### Turns case—people become dependent on others for their ability to go to college—that’s a dominating relationship.

# Revenge Porn DA

## 1NC

#### Revenge porn legislation is coming in the status quo on campuses.

**Abdul-Alim:** Abdul-Alim, Jamaal [Contributor, Diverse] “Colleges May Get Help Fighting ‘Revenge Porn’.” *Diverse.* October 3, 2016. RP

**WASHINGTON — A proposed law that would punish people who publish “revenge porn” online will likely be put forth in the next Congress, but it remains to be seen how effective the measure — if passed — would be in combating the practice on America’s college campuses**.“We are totally aware of the huge problem on campus of sexual assault and this sort of conduct on campuses as well,” said Josh Connolly, chief of staff for U.S. Rep. Jackie Speier (D-Calif.), who introduced the bill — known as the “Intimate Privacy Protection Act,” or IPPA — earlier this year and plans to do so again next session. While sexual assaults on campus are often handled by Title IX coordinators, Connolly said he didn’t foresee that happening if the revenge porn bill becomes law. He said the “default” should be to have attorneys general or district attorneys handle the cases. “**Regarding any sort of jurisdictional ambiguity, we don’t really foresee that,” Connolly said. “I think it is solidly within a DA or an AG’s jurisdiction of whether or not to take a case or not, and we would encourage them to do so**.” Connolly made his remarks Friday during a panel [discussion](https://www.c-span.org/video/?416135-1/discussion-focuses-combating-revenge-porn) on Capitol Hill titled “Outlawing Revenge Porn: How Congress Can Protect Privacy and Reduce Online Harassment.” The discussion comes at a time when sex video scandals — sometimes with costly and tragic results — are making more and more headlines. People of all ages have become ensnared in the practice in which perpetrators post images or videos of their victims nude or engaged in sex acts.<http://diverseeducation.com/article/73946/>The victims range from celebrities such as Hulk Hogan, who earlier this year won a $140 million lawsuit against Gawker for publishing a portion of a sex tape of the pro wrestler, to otherwise anonymous young people such as Tovonna Holton, 15, who committed suicide this year after friends video recorded her in the shower and posted it on social media app Snapchat. Similar things have happened at colleges and universities in recent years. For example, Tyler Clementi, an 18-year-old Rutgers University freshman, leapt to his death after a roommate used a webcam to live broadcast Clementi on social media having sex in his dorm with another man. The roommate, Dharun Ravi, served 20 days in jail on various charges and was ordered to pay $10,000 to a program to help victims of hate crimes. However, his conviction was overturned last month due to a change in state law. Last year, Penn State banned Kappa Delta Rho fraternity for three years after it surfaced that members of the fraternity had been using an invitation-only Facebook page to post photos of nude women who were passed out. Congresswoman Speier said the Internet has become a “new age sewage pipeline carrying the worst material imaginable in endless quantities.”“As social media proliferates, so do the opportunities to destroy people’s lives,” Speier said at Friday’s discussion on The Hill. “**Young people are committing suicide because of their images being distributed without their consent.”While the majority of states have passed various types of anti-revenge porn laws, Speier said the “patchwork” of state laws — some of which only target those who are motivated by a desire to harass the victim — creates great uncertainty for victims. “If passed, this bill will punish individuals and websites that knowingly post private, intimate materials while also providing a safe harbor for websites that don’t advertise or solicit such content**,” Speier said. Speier said her proposed revenge porn law has been reviewed by 12 constitutional scholars who have all refuted concerns that the law would violate free speech. Among the scholars who back the bill are University of Miami law professor Mary Anne Franks. “A federal criminal law is necessary not only to provide a single, clear articulation of the relevant elements of the crime, but also to signal society’s acknowledgement and condemnation of this serious wrongdoing,” Franks, who helped draft the bill, has [written](http://www.huffingtonpost.com/mary-anne-franks/how-to-defeat-revenge-porn_b_7624900.html). Under the bill, perpetrators who post images of a person who is naked or engaged in sex could be fined or imprisoned for up to five years if they did so without the person’s consent. Carrie Goldberg, a Brooklyn-based attorney who represents victims of revenge porn, said 90 percent of the victims are women and range in age from 13 to 65. She said having one’s naked images published online can do irreparable harm. “At this point in time no one can get a job, date or even a roommate without being Googled,” Goldberg said. “How would you feel if the first five pages of your results were images of you fully exposed and images you never wanted anyone to see?” Goldberg said revenge porn on campus is becoming more common and said her firm is handling one such case but that she could not disclose the particulars. She criticized authorities who handled the Penn State case because although Pennsylvania has a revenge porn law, it was not applied against the Kappa Delta Rho fraternity because of apparent lack of intent.

#### Revenge porn IS Constitutionally protected, so the aff has to defend it

**Humbach**: Humbach, John A. [Professor of Law, Pace University School of Law] “The Constitution and Revenge Porn.” *Pace Law Review*, Vol. 35, No. 1, 2015. BE

It appears that **most of the revenge-porn laws recently proposed and enacted, which simply punish sexually-themed images disseminated without consent of persons depicted, are unconstitutional as** content-based regulations **of speech that cannot pass strict scrutiny or fit within a categorical exception to the First Amendment.** However, by framing a law in such **a** way that it establishes an otherwise valid non-speech crime whose burden on speech is only incidental to that crime, a legislature should be able to address the primary harms of **revenge porn** without its law being subject to strict scrutiny as content discrimination, viewpoint discrimination or speaker discrimination—in the exactly same way that Title VII presumably does not illicitly rely on any of these discriminations to achieve its statutory goals. However, even though there is reason to believe that a statute along these lines could survive constitutional scrutiny as an incidental burden on speech, one cannot be sure.191 After all, **such a law would still represent, in the final analysis, an initiative by government to suppress speech that it does not favor, and the basic meaning of the First Amendment is to prohibit exactly that sort of thing.**

#### Revenge porn has serious psychological impacts and other long term impacts—social isolation also turns your impacts about solidarity and activism.

**Kamal and Newman 16—modified for offensive language**, Mudasir Kamal and William J. Newman [Dr. Kamal is a General Psychiatry Resident and Dr. Newman is an Associate Professor of Psychiatry, Department of Psychiatry, Saint Louis University School of Medicine, St. Louis, MO], “Revenge Pornography: Mental Health Implications and Related Legislation”, The Journal of the American Academy of Psychiatry and the Law, September 2016, 44 (3) 359-367, BE

**Revenge pornography can have** serious mental health implications **for victims**. Victims must cope with long-term personal and psychological consequences, given that the disseminated photographs or videos may continue to haunt them throughout their lives. According to one study, 4**9 percent of victims reported that they experienced cyberharrassment and cyberstalking** by online users who viewed their posted photographs. The same study noted that **80 to 93 percent of victims suffered significant emotional distress** after the release of their explicit photographs.17,19 **The distress includes anger, guilt, paranoia, depression, or even suicide. There may also be deterioration in personal relationships and feelings of isolation**. Many of the long-term negative consequences of revenge pornography are similar to those seen in victims of child pornography. The **humiliation, powerlessness, and permanence associated with these distinct but similar crimes leave [survivors] victims engaged in a lifelong battle to preserve their integrity.** Consequently, victims of revenge pornography suffer from similar enduring mental health effects as described by victims of child pornography, such as depression, withdrawal, low self-esteem, and feelings of worthlessness.25 Annemarie Chiarini, a college English professor in Maryland and the Victim Services Director for the Cyber Civil Rights Initiative, has spoken publicly, particularly on the Internet, about her unfortunate experience with revenge pornography. Her long-distance boyfriend pressured her for months to send him nude photographs. He promised her that the photographs would remain on a private CD that only he would access.26 In February 2010, two days after they broke up, Ms. Chiarini's boyfriend started an eBay auction for the CD containing her nude photographs. He posted links of the auction on various Facebook pages associated with her college. Ms. Chiarini contacted the police, but they insisted that there was nothing that they could do. Over the next year, she lived in persistent fear that she would be exposed. She would occasionally wake up in the middle of the night just to check her e-mail and Facebook and to Google her name. In September 2011, Ms. Chiarini worst fear came true. She received an anonymous e-mail alerting her to the existence of an online profile on a porn website featuring her nude photographs. Along with her nude photographs, the profile listed her full name, location of residence, and name of her employer. Again, the police denied requests for assistance and instructed her to contact them after a crime had actually been committed. Two days after she discovered her nude photographs online, Ms. Chiarini attempted suicide. Fortunately, she was unsuccessful and later went on to advocate actively for legislation criminalizing revenge pornography.27 Jessica Logan, a high school student in Ohio, was another victim of revenge pornography. She texted nude photographs to her boyfriend, who subsequently sent them to fellow classmates after they broke up. These photographs quickly circulated, and Ms. Logan suffered extreme harassment from her classmates. She was called vicious names and had objects thrown at her. The high school administration failed to intervene. Ms. Logan began skipping school to escape the humiliation. Her guidance counselor suggested that she participate in a televised interview discussing the topic of sexting. After the interview aired, Ms. Logan experienced increasing harassment. One day, after returning home from the funeral of a friend who had committed suicide, Ms. Logan took her own life by hanging herself in her bedroom.28 In April 2015, Kevin Bollaert, founder of the revenge porn website UGotPosted.com was sentenced to 18 years in state prison for 27 counts of identity theft and extortion, representing the first time a person in the United States had been convicted on charges related to operating a revenge pornography website (Mr. Moore's conviction followed in 2015). This website enabled anonymous posting of explicit photographs without victims' consent along with names, addresses, and social networking details. More than 10,000 images were posted to the website from December 2012 through September 2013. Mr. Bollaert operated an associated website called ChangeMyReputation.com where victims paid him $250 to $350 to have their photographs removed. One of the many women who testified in court, said she experienced considerable victim shaming and felt led to believe it was all her fault. She admitted that she had attempted suicide.29 Other victims shared stories of damaged relationships and lost jobs directly related to the release of their nude photographs. One victim, who was thrown out of her house when her family discovered the explicit photographs, stated, “It ruined my life and I'm still going through it. I lost my family. They think that I brought shame on them. My reputation is ruined.”29 In addition to psychological damage, **the [survivor] victim may suffer termination of employment or may have difficulty in gaining future employment**. Increasingly, **employers conduct online searches to evaluate potential job candidates. Some victims resort to** changing their names **in an attempt to escape their past**. Holly Jacobs, now a revenge pornography activist who founded the website EndRevengePorn.com, experienced firsthand the negative impacts of revenge pornography on employment. In 2009, her ex-boyfriend began posting explicit photographs of Ms. Jacobs on the Internet along with her full name, e-mail address, details of employment, and a screenshot of her Facebook profile. She spent three years in full-time damage control mode, hired a lawyer and an Internet specialist to assist with removal of posted photographs, and pled with law enforcement to file charges against her ex-boyfriend, all to no avail.30 An anonymous informant e-mailed the human resources department at her university and claimed “a professor is masturbating for her students and putting it online” (Ref. 18, p 241). Ms. Jacobs ultimately quit her job in the face of such embarrassment. She even attempted to change her name to escape the scrutiny. Her harasser simply reposted her explicit photographs and linked them to her new name after learning of the name change.

#### Freedom requires that people have the right to control their own representations—turns case.

ALICE HAEMMERLI 99 [Dean of Graduate Legal Studies and International Programs, Columbia Law School. A.B., Vassar College; M.Sc., London School of Economics; M.A., Ph.D., Harvard University; J.D., Columbia Law School], “WHOSE WHO? THE CASE FOR A KANTIAN RIGHT OF PUBLICITY”, Duke Law Journal, VOLUME 49 NUMBER 2, November 1999, BE

In Kant’s system, then, the exercise of human capacity for rea- son136 is an assertion of human freedom. Reason, freedom, and hu- man autonomy are intertwined in Kant’s moral philosophy,137 and the notion of individual control and self-determination is fundamental. The central concept of autonomy in Kantian philosophy could lend itself to a philosophical justification of a right of publicity. Autonomy implies the individual’s right to control the use of her own person, since interference with one’s person is a direct infringement of the innate right of freedom (which takes concrete form in social life as liberty or freedom from compulsion by others).138 Of course, the no- tion of “use” of one’s person may, at first blush, appear inconsistent with another of Kant’s well-known injunctions—that a person should be an “end,” not merely a “means;”139 but here, we should note that the injunction says, “Do not make yourself into a mere means for others, but be at the same time an end for them.”140 Thus, we can con- template an individual’s right to control the use of her own person without contradicting that duty.141¶ The question becomes somewhat more complicated if we ask whether the autonomy right to control the use of one’s own person extends to control over images or other objectifications of the self. The right of publicity, after all, relates to uses of objectifications, not to manipulation of the person himself. Does the autonomy right em- brace those uses, or is more needed to provide control over them?¶ 2. Kantian Property. A look at Kant’s theory of property quickly establishes the intrinsic link between personal autonomy and a property right in objectified identity. In Kant’s system, property is an outgrowth of human freedom. All things can be owned and used; were there things outside our power (or our capacity to make use of them), this would conflict with freedom, because it would deprive freedom of the use of its will in relation to such things. Therefore, “it is an a priori assumption of practical reason that any and every object of my will be viewed and treated as something that has the objective possibility of being yours or mine.”142 Following on this assumption, Kant’s “juridical postulate of practical reason” asserts that “it is possible to have any and every external object of my will as my property.”143 Freedom is also implicated in the act of possession, because an object “is mine de jure (meum juris) if I am so bound to it that anyone else who uses it without my consent thereby injures me.”144 That is, if I possess145 an object, then “anyone who touches it without my consent . . . affects and diminishes that which is internally mine (my freedom).”146 There is thus an intrinsic connection in Kant’s philosophy between property and freedom—that sole innate right that “belongs to every human being” and constitutes the “attribute of a human being’s being his own master.”147¶ This means that, in a Kantian system, property is inseparably associated with one’s “personhood” because property grows out of freedom and freedom is essential to personhood. As to whether a person should be able to claim a property right in the use of her ob- jectified identity,148 there is no logical reason why she should not and every reason why she should: if one’s own image, for example, is treated as an object capable of “being yours or mine,” why should it not be claimed by the person who is its natural source? To the extent it is available as some person’s property—and if viewed as an object, it must be so available—its source would seem to have the strongest claim. That claim would also necessarily be prior to others’ in both temporal and qualitative terms. The connection between a person and her physical characteristics is innate.149 It therefore logically pre- cedes that of any particular physical manifestation of the image or any manipulation of it by others. This is essentially a first-occupancy argument, based on the idea that a person is first to “arrive” at his own persona and thus at objectifications of it. Some scholars criticize first occupancy as an inadequate justification of private property, viewing it rather as a way of resolving disputes over property once it has been established that private property should exist.150 Clearly, using it as suggested here is indeed to use it as a means of determin- ing priority rather than justifying the existence of the property. To the extent that it is a first-occupancy approach, however, it is not troubled by problems such as defining “occupancy,” since occupancy of one’s self would seem to need little elaboration. In other words, once we accept the notion of property in an objectification of person- ality (such as image), first occupancy tells us who ought to be the proprietor. With this sufficient ground for an assertion of a property right to the use of objectified identity, unconsented interference with it will infringe the owner’s innate right of freedom.151¶ At this point, it may be objected that because we are ultimately concerned with identity in the world, rather than in the abstract, one must distinguish between the “moral personality” described in Kant’s moral philosophy and civil personality in Kant’s system. How does the outside world affect the autonomy so central to Kant’s moral philosophy? If “moral personality is nothing but the freedom of a ra- tional being under moral laws,”152 civil personality is a creature of ex- ternal laws. In that latter realm (which comprises both natural and positive laws), human beings are no longer viewed solely from the standpoint of their essential and “supersensible” humanity, inde- pendently of empirical determinations, but as affected by such de- terminations.153 Thus, the individual must be viewed in that social context, as well as from the standpoint of the person as an end in himself. It seems, however, that for Kant, despite the fact that public law is not concerned with moral motivation or maxim,154 but only with external acts, “[p]ublic Law [law of the civil state] does not involve any additional or different duties among men than can be thought of under private Law; the matter . . . of private law is exactly the same in both.”155 This implies that, despite the distinction between the inter- nal moral sphere and the external legal one,156 human personality and innate freedom remain constant. As such, it is not plausible to believe that once the innate right of freedom has triggered the transition to civil society, it is any less relevant to personality than it was before. Indeed, even those who might not possess civil personality in Kant’s system157 remain entitled to assert the demand that they be treated in accordance with the laws of natural freedom and equality.158 In short, the existence of the state obviously means that we are in the field of external law, rather than ethics;159 but within that field, the focus re- mains on relationships between wills “insofar as they are regarded as free,”160 and even persons who are not citizens, or who have lost their civil personality, retain their innate personality and rights as per- sons.161¶ For this reason, despite the distinction between moral personal- ity and civil personality, the bedrock principle of human autonomy, and of the innate right of freedom, remains constant. Moreover, the property claim to objectified image, beginning as a form of posses- sory property, is solidified, rather than compromised, by the estab- lishment of civil society. If the need to make noumenal property pos- sible leads to the establishment of a civil society,162 such property is now secured. Consequently, it would seem that a person should be able to assert a property right in objectified image that the law can, and arguably ought to, protect.163¶ Note that there is no “Lockean” notion here of property rights acquired through labor.164 The right to control the use of one’s image or other objectification of identity is a property right based directly on freedom, autonomy, or personality. In fact, Kant explicitly rejects a labor theory, stating that cultivation of land, for example, is not es- sential to the acquisition of property rights in it. Kant says that the modification of a thing by labor “forms nothing more than an exter- nal sign of the fact that it has been taken into possession.”165¶ In summary, an innate right to one’s persona, and an accompa- nying property right in the uses and control of the objectification of that persona, can be grounded in idealist philosophy (keeping in mind that image-as-object may also be qualified as having a subjec- tive, personal, inward aspect and that it is not a “thing” like any other).166 Like intellectual property, image can be viewed as unique, a product of the peculiar mix of mental, psychological, and physical at- tributes that make the progenitor the individual she is. If copyright doctrine eschews labor167 and seeks to identify a uniquely personal contribution to a work,168 publicity rights doctrine can certainly do likewise with respect to the objectification of identity.169 Even more broadly, this philosophical orientation permits us to reconceive the right of publicity as a freedom-based property right with both moral and economic characteristics, rather than being forced to make a di- chotomous choice between a privacy right concerned with moral in- jury on the one hand, or a purely pecuniary publicity right on the other.170

#### Here’s a card from your author! Porn should be regulated since it intentionally diminishes women’s equality and makes representation of themselves subject to the arbitrary will of others.

Febres 11: Power Febres, C. Liberalism, feminism and republicanism on freedom of speech: the cases of pornography and racist hate speech. Dissertation. UCL (University College London), 2011. APA. BE

Despite the lack of work to be found by republicans on free speech matters, one can find those who have directly tackled the issue of pornography. Sunstein, it has been argued by some,375 even sides with the radical feminist view on this matter. Indeed, he acknowledges his definition of pornography derives from these perspectives.376 Sunstein regards the protection of speech as key to the workings of society. However, he also regards the “prohibition of discrimination against blacks and women”377 as equally important. Sunstein identifies a conflict between free expression and the prohibition of discrimination, which leads him to conclude that restrictions upon pornography should be constitutionally founded.378 In order to facilitate restrictions, Sunstein offers a definition of pornography as material which “must (a) be sexually explicit, (b) depict women as enjoying or deserving some form of physical abuse, and (c) have the purpose and effect of producing sexual arousal”?79 The reasons given by Sunstein as to why pornography should be regulated focus on pornography as diminishing women’s equality, due to it defining women as subordinate to men,380 which, in turn, can be seen as making women un-free in accordance with republicanism’s freedom as non-domination. Being a subordinate, means that someone has the capacity of arbitrary interference over you. From this perspective restricting pornography increases freedom and freedom of speech, as those oppressed by it will gain greater equality in its absence. Sunstein is concerned with three possible categories of gender related harm when regarding pornography, the harm caused to those participating in the production of pornography; the harm caused by sex-crimes that may otherwise not have been committed had it not been for the influence of pornography; and the harm caused by the social conditioning derived from the view of women promoted by pornography?81 In addition, Sunstein turns to regulation, as opposed to the countering of pornography through more speech in the deliberative process, due to the fact that pornography’s message is communicated indirectly. As such, it would be very difficult to counter it through more speech.382

# Case Arguments

## Solvency

### Overview

#### Non domination requires orienting systems to side with targets of hate speech

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

Two final aspects of hate speech are incessancy—the tendency to recur repeatedly in the life of a victim—and compounding. A victim of a racist or similar insult is likely to have heard it more than once. In this respect, a racial epithet differs from an insult such as “You damn idiot driver” or “Watch where you’re going, you klutz” that the listener is apt to hear only occasionally. Like water dripping on stone, racist speech impinges on one who has heard similar remarks many times before. Each episode builds on the last, reopening a wound likely still to be raw. The legal system, in a number of settings, recognizes the harm of an act known to inflict a cumulative harm. Ranging from eggshell plaintiffs to the physician who fails to secure fully informed consent, we commonly judge the blameworthiness of an action in light of the victim’s vulnerability. **When free-speech absolutists trivialize the injury of hate speech as simple offense, they ignore how it targets the victim because of a condition he or she cannot change and that is part of the victim’s very identity.** Hate speakers “pile on,” injuring in a way in which the victim has been injured several times before. The would-be hate speaker forced to keep his thoughts to himself suffers no comparable harm. **A comparison of the harms to the speaker and the victim of hate speech, then, suggests that a regime of unregulated hate speech is costly, both individually and socially. Yet, even if the harms on both sides were similar, one of the parties is more disadvantaged than the other, so that Rawls’s difference principle suggests that, as a moral matter, we break the tie in the victim’s favor**. Moreover, the magnitude of error can easily be greater, even in First Amendment terms, on the side of nonregulation. Hate speech warps the dialogic community by depriving its victims of credibility. Who would listen to one who appears, in a thousand scripts, cartoons, stories, and narratives as a buffoon, lazy desperado, or wanton criminal? **Because one consequence of hate speech is to diminish the status of one group vis-à-vis all the rest, it deprives the singled-out group of credibility and an audience, a result surely at odds with the underlying rationales of a system of free expression**.

#### There are tons of exceptions to the First Amendment in the status quo – that non-uniques Aff offense.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence. If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions.** First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother. But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. **How important is it to protect a black undergraduate walking home late at night from the campus library? As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?** Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.

#### Absolutionist approaches to free speech aren’t pragmatic – they trade off with other rights and ignore these consequences

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

This Article argues that courts should constrain free speech consequentialism by considering only the speech harms that are sufficiently similar to conduct harms when evaluating the harms caused by speech. **Speech harms typically have unique properties, such as being context dependent and caused by diffuse parties, but some harms caused by speech resemble the more direct and immediate harms arising in paradigmatic cases of conduct**. Analogizing speech harms to conduct harms would allow courts to protect individuals from the more tangible harms caused by speech while preserving the specialness of speech’s virtues. After describing and justifying this constrained approach to free speech consequentialism, this Article then applies the proposal to analyze timely and difficult free speech issues. **Strong free speech protections come at the expense of many types of speech-related harms, including emotional distress, privacy intrusions, reputational damage, and violence provoked in audiences**. A recent wave of scholarship argues for more explicit and more heavy-handed forms of free speech consequentialism to remedy these harms. **Scholars have begun to criticize free speech jurisprudence for being dismissive of harm, and for not properly distinguishing the different mechanisms by which speech causes harm. Although the First Amendment currently occupies a vaunted position in our legal and cultural practices, scholars have begun to use arguments sounding in consequentialism to chip away at the rules-based First Amendment regime.**

### Contention 1 – Free Speech

#### Speech codes are key to avoid domination – they increase democratic governance.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda**, in many cases to comply with international treaties and conventions requiring such action. Many of these countries traditionally respect free speech at least as much as the United States does. **No such nation has reported any erosion of the atmosphere of free speech or debate. At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, hounded Hollywood writers out of the country, and harassed and badgered such civil rights leaders as Josephine Baker, Paul Robeson, and W. E. B. DuBois in a campaign of personal and professional smears** that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” Controversial artists are denied federal funding. Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. **If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.**

#### Racist speech creates process defects that states have an obligation to remove from the marketplace of ideas

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

\*\*\*Bracketed for offensive language

**Professor Ely coined the term "process defect" in the context of de- veloping a theory to identify instances in which legislative action should be subjected to heightened judicial scrutiny under the equal protection clause. Ely argues that the courts should interfere with the normal majoritarian political process when the defect of prejudice bars groups subject to widespread vilification from participation in the political process** and causes governmental decisionmakers to misapprehend the costs and benefits of their actions. **This same process defect that excludes vilified groups and misdirects the government operates in the market- place of ideas.** Mill's vision of truth emerging through competition in the marketplace of ideas relies on the ability of members of the body politic to recognize "truth" as serving their interest and to act on that recognition. As such, this vision depends upon the same process that James Madison referred to when he described his vision of a democracy in which the numerous minorities within our society would form coalitions to create majorities with overlapping interests through pluralist wheeling and dealing. **Just as the defect of prejudice [obscures] ~~blinds~~ the white voter to interests that overlap with those of vilified minorities, it also [obscures] ~~blinds~~ him to the "truth" of an idea or the efficacy of solutions associated with that vilified group**. And just as prejudice causes the governmental deci- sionmakers to misapprehend the costs and benefits of their actions, it also causes all of us to misapprehend the value of ideas in the market. **Prejudice that is unconscious or unacknowledged causes even more distortions in the market. When racism operates at a conscious level, opposing ideas may prevail in open competition for the rational or moral sensibilities of the market participant. But when an individual is unaware of his prejudice, neither reason nor moral persuasion will likely succeed**. 146 **Racist speech also distorts the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites**. An idea that would be embraced by large numbers of individuals if it were offered by a white individual will be rejected or given less credence because its author be- longs to a group demeaned and stigmatized by racist beliefs.

#### Unlimited free speech chills deliberation – people are damaged and afraid to speak out.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**If the purpose of the First Amendment is to foster the greatest amount of speech, racial insults disserve that purpose. Assaultive racist speech functions as a preemptive strike. The invective is experienced as a blow, not as a proffered idea, and once the blow is struck, it is unlikely that a dialogue will follow. Racial insults are particularly undeserving of First Amendment protection because the perpetrator's intention is not to discover truth or initiate dialogue but to injure the victim. In most situations, members of minority groups realize that they are likely to lose if they respond to epithets by fighting** and are forced to remain silent and submissive.

### Contention 2 – Deliberation

#### You miscut the self-government theory so badly – this justifies colleges limiting forms of undesirable speech

**Bunker:** Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” Mahwah, NJ: Lawrence Erlbaum Associates, 2001. RP

\*\*\*Bracketed for gendered language

**Alexander Meiklejohn, perhaps the leading proponent of the self-government theory, argued that** the freedom of speech guaranteed by the First Amendment was the means by which democracy functioned. For unless self-governing citizens had access to information and opinions relevant to issues about which they must ultimately make decisions, the democratic experiment could not succeed. The **speech protected by the First Amendment, Meiklejohn argued, was speech aimed at enhancing citizen participation in political issues**. “We the people who govern, must try to understand the issues which, incident by incident, face the nation,” he wrote. “We must pass judgment upon the decisions which our agents make upon those issues. And, further, we must share in devising methods by which those decisions can be made wise and effective, or, if need be, supplanted by others which promise greater wisdom and effectiveness**.”. Meiklejohn, however, had a relatively narrow view of freedom of speech. It was** not**, he contended, a right of each citizen to express her views on whatever matters she [they] pleased. Instead, it was a collective right that applied only to information germane to democratic decision making. Thus, in Meiklejohn’s scheme, it is only speech for** public purposes **that deserves absolute protection under the First Amendment. Purely private speech is subject to regulation under a much weaker standard**. Meiklejohn used the metaphor of a New England town meeting to illustrate his theory. At the town meeting, participants must speak under rules that guarantee the relevance of their comments. The town meeting is not Hyde Park Corner, Meiklejohn noted, but is instead an institution devoted to advancing the public’s business through the moderated discussion of public policy. So it is with free speech under the First Amendment. As Meiklejohn famously put it: **The First Amendment, then, is not the guardian of unregulated talkativeness. It does not require that, on every occasion, every citizen shall take part in public debate. Nor can it give assurance that everyone shall have opportunity to do so....What is essential is not that everyone shall speak, but that everything worth saying shall be said**. Meiklejohn distinguished his self-governance theory from the marketplace of ideas theory by noting that the latter was a means to identify truth, while the former was “a device for the sharing of whatever truth has been won.” This distinction can hardly be considered as hard edged as the quoted statement suggests, however. Many commentators have noted that there is at the least some overlap between the two approaches, although, of course, the marketplace metaphor has significantly broader application across a range of human enterprises.

#### Minority voices are ignored in the marketplace of ideas if we allow hate – empirics go neg.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

With hate speech and pornography, heeding the ACLU's totalist argument introduces special dangers of its own. **Hate speech lies at the periphery of the First Amendment, as the proponents of the totalist argument quickly concede. Yet the reason why hate speech does so is that it implicates the interest of another group, minorities, in not being defamed, reviled, stereotyped, insulted, badgered, and harassed. Permitting a large number of social actors to portray a relatively powerless social group in this fashion helps construct a stigma-picture or stereotype that describes members of the second group as lascivious, lazy, carefree, immoral, stupid, and so on. This stereotype guides action, making life much more difficult for minorities in transactions that clearly matter**: getting a job, renting an apartment, hailing a cab. But it also diminishes the credibility of minority speakers, inhibiting their ability to have their points of view taken seriously, in politics or anywhere else-surely a result that is at odds with the First Amendment and the marketplace of ideas. This is an inevitable consequence of treating peripheral regions of a value as entitled to the same weight we afford that value when it is centrally implicated: We convey the impression that those other values-the ones responsible for the continuum in the first place-are of little worth. And when those other values are central to the social construction of a human being or social group, the dangers of undervaluing their interests increase sharply. Their interests are submerged today-in the valuing a court or decisionmaker is asked to perform. And their interests are submerged in the future, because they are thereafter the bearers of a stigma, one which means they need not be taken fully into account in future deliberations. Permitting one social group to speak disrespectfully of another habituates and encourages speakers to continue speaking that way in the future. The way of speaking becomes normalized, inscribed in hundreds of plots, narratives, and scripts; it becomes part of culture, what everyone knows. The reader may wish to reflect on changes he or she surely has observed over the last fifteen years or so**. During the civil rights era of the sixties and early seventies, African- Americans and other minorities were spoken of respectfully. Then, beginning in the late seventies and eighties, racism was spoken in code. Now, however, op-ed columns, letters to the editor, and political speeches deride and blame them outspokenly. Antiminority sentiment need no longer be spoken in code but can be proclaimed outright. We have changed our social construct of the black from unfortunate victim and brave warrior to welfare leeches, unwed mothers, criminals, and untalented low-IQ affirmative action beneficiaries who take away jobs from more talented and deserving whites. The slur, sneer, ethnic joke, and most especially face- to-face hate speech are the main vehicles that have made this change possible.**

#### Free speech has become a hegemonic ideology that prevents agonistic democracy.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**It could be argued that while freedom of speech is considered one of the cornerstones of a democracy, it is at the same time also one of the most contested rights**. The recent Danish cartoons controversy depicting the prophet Muhammad, deemed to be blasphemous by Sunni Muslims, is a case in point (Sturges, 2006; Post, 2007). From a liberal and rather procedural perspective on democracy, freedom of speech and the press needs to be almost absolute, preventing state interference in determining which speech is acceptable and which not (Dworkin, 1994). **However, in democratic societies embedded in the social responsibility tradition, freedom of speech is more carefully weighed against other rights and protections and considered relative rather then absolute** (Lichtenberg, 1990). The US First Amendment of the Constitution epitomises the absolutist perspective. It states that ‘Congress shall make no law ... abridging the freedom of speech, or of the press’. Embedded in a tradition of individualism and libertarianism, and a firm belief in the need for citizens to be protected from the state, the freedom to be able to say what on wants, when and how, is sacred. **However, by protecting the content of all speech in such an absolute way, ‘the action that the speech performs’ (Butler, 1997: 72) is not taken into consideration.** As such, fairly rigid dichotomy is being constructed between the marketplace of ideas and social action. **Furthermore, the First Amendment discourse has become truly hegemonic – a dogmatic ideology in itself, which leads Schauer (1995: 13) to argue that there is ‘little free thought about free thought, little free inquiry about free inquiry and little free speech about free speech’. Although freedom of speech is undeniably a highly valued right of any democracy, it does not take priority over all other rights and liberties at all times, not even in the US.** Anti-defamation legislation, laws against obscenity, consumer and even copyright protection illustrate this clearly. Furthermore, in the 1950s and beyond the freedom of speech for US socialists and communists was seriously curtailed (Rosenfeld, 2001: 12). Concerning the relationship between freedom of speech and hate speech the issues are, however, much more complicated. While incitement to violence is outlawed, hate speech is protected by the First Amendment doctrine. In this regard, Matsuda (1993: 31-32) points out that ‘people are free to think and say what they want, even the unthinkable. They can advocate the end of democracy’, and furthermore ‘expressions of the ideas of racial inferiority or racial hatred are protected’. The claim by Schauer that there is very little free speech about the freedom of speech and Matsuda’s argument that even the end of democracy can be called for, are not entirely convincing, even within the liberal paradigm and the procedural view of democracy. Popper’s ‘paradox of tolerance’ is a good example of this. According to Popper (1965: 265) an open and tolerant society cannot survive if tolerance is unlimited: ‘**Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.**’

#### Free speech is for the privileged few – dominant social groups coopt free speech and silence oppressed voices – marginalized groups are stuck in a binary between being heard and being dismissed

Manne & Stanley 15, Kate Manne [assistant professor of philosophy at Cornell University] and Jason Stanley [professor of philosophy at Yale University. He is the author, most recently, of How Propaganda Works (Princeton University Press)], "When Free Speech Becomes a Political Weapon," Chronicle of Higher Education, 11-13-2015, http://www.chronicle.com/article/When-Free-Speech-Becomes-a/234207, ghs//BZ

Students at the University of Missouri recently succeeded in pressuring the institution’s president and chancellor to step down. At other campuses across the country, we are witnessing a wave of similar protests. Frequently, however, the students protesting are being misrepresented and belittled in the news media as childish and coddled. More worryingly still, they are held to be attacking freedom of speech rather than exercising it to call for institutional reform — political action of the very kind this freedom aims at protecting. What explains this apparent paradox? In a word, propaganda. The notion of freedom of speech is being co-opted by dominant social groups, distorted to serve their interests, and used to silence those who are oppressed and marginalized. All too often, when people depict others as threats to freedom of speech, what they really mean is, "Quiet!" Recent events at Yale are an important case in point. In late October, in anticipation of Halloween, Yale’s Intercultural Affairs Committee sent an email to the student body. While affirming Yale’s strong commitment to freedom of speech, it suggested that students be mindful of the perspectives of minority groups when planning their costumes. "Yale is a community that values free expression as well as inclusivity," it read. "And while students, undergraduate and graduate, definitely have a right to express themselves, we would hope that people would actively avoid those circumstances that threaten our sense of community or disrespects, alienates or ridicules segments of our population based on race, nationality, religious belief or gender expression." Not a decade has passed since the last Yale student reportedly celebrated Halloween in blackface. Some deemed the advice infantilizing and heavy-handed. On October 30, Erika Christakis, associate master of Silliman College at Yale, sent a response to this email to its student residents. She decried the "implied control" and "censure and prohibition from above" which she read into it. Quoting her husband, Nicholas Christakis, master of Silliman, she wrote "if you don’t like a costume someone is wearing, look away, or tell them you are offended. Talk to each other. Free speech and the ability to tolerate offence are the hallmarks of a free and open society." The notion of freedom of speech tends to be ambiguous. It is used to refer to both the political right it enshrines, and the ethical ideal it embodies. The former is guaranteed in this country by the First Amendment to the Constitution. Together with the 14th Amendment, this means that nobody’s right to express himself or herself may be interfered with by the government. (The few exceptions to the rule — unprotected speech — include acts like falsely claiming "fire!" in a crowded theater, "fighting words," and slander.) Of course, in order to have genuine freedom of speech, one must also be free to question, contradict, and even lampoon the assertions of others. Also protected is the right to say that someone else’s choice of words was insensitive or inappropriate, or that she ought not to have spoken up in the first place. Censure is not the same thing as censorship; indeed, it could not be. The right not to be censored by the government extends to the right to censure — that is, morally condemn — the speech acts of other people. This leads to a delicate and controversial question: To affirm the value of freedom of speech, and to keep from silencing others unethically, when may we encourage people to choose their words more carefully, or tell them they ought to have kept silent? When should we say that, although someone had the right to say what he said, his saying it was a problem? Even the most avid proponent of freedom of speech cannot avoid this issue. When people disagree about who should say what to whom — and how — either someone has to keep mum, or someone’s speech act will come in for criticism. Perhaps Erika Christakis did not intend to weigh in on one side or the other of the culture wars. Her remarks nevertheless provoked a strong reaction from some students. This is not surprising, against the current political backdrop. Free speech has become an increasingly politicized issue at Yale and elsewhere. A few months ago, the university’s William F. Buckley Jr. Program hosted the New York University social psychologist Jonathan Haidt. In his talk, Haidt invoked notions like freedom of speech and the search for truth to inveigh against "coddled" students. The obvious target was groups who have historically been oppressed and are now increasingly prone to calling attention to microaggressions. Haidt, together with Greg Lukianoff, president of the Foundation for Individual Rights in Education, has argued recently in The Atlantic that these students are being immature and oversensitive. Following Christakis’s email, protests erupted among students of color and their supporters. Their political activity has since been written off by many commentators as a silly tantrum thrown in response to a one-off email, rather than a reaction to chronic, structural racial injustice — such as the persistent paucity of black faculty members and administrators at Yale, the common experience of being the only black student in some classes, and being disproportionately likely to be stopped and asked for ID — or worse — by campus police officers, as students have movingly testified. An article in the National Review went so far as to call these students of color "defective people from defective families" — an eyebrow-raising choice of language. The Christakises are of course not responsible for the tensions their remarks brought to the surface. Indeed, Nicholas Christakis took to Twitter to make some of the very points in defense of Silliman students which we make in this article. Nevertheless, the protesting Yale undergraduates have become pawns in the culture wars, being demonized as threats to freedom of speech, rather than political agents engaged in its exercise. It is therefore past time to lay this myth to rest, and to expose its ideological function. Consider the structure of the events at Yale. After the Intercultural Affairs Committee sent its original email, Erika Christakis opposed it — not merely its content, but the very act of their issuing it. The students then opposed her opposition — alleging that she ought not to have spoken as she did, given her position as associate master of Silliman College. And many pundits have, in turn, opposed their opposition — holding that the students ought not to be protesting thus. So far, so similar; these speech acts are on a par not only constitutionally, but also insofar as each opposes the one aforementioned. Given these symmetries, why the markedly different reactions? Part of it is that, when people lower down in social and institutional hierarchies criticize the speech acts of those higher up, it often reads as insubordination, defiance, or insolence. When things go the other way, it tends to read as business as usual. Why? In a 1988 paper, the Stanford psychologist Claude Steele proposed the existence of "a self-system that explains ourselves, and the world at large, to ourselves. The purpose of these constant explanations (and rationalizations) is to maintain a phenomenal experience of the self — self-conceptions and images — as adaptively and morally adequate — that is, as competent, good, unitary, stable." Self-affirmation theory predicts that members of groups that have benefited from practices of exclusion, and have sometimes been actively complicit (more or less unwittingly) in sustaining them, will experience a serious disruption of their sense of self when confronted by injustice. The Yale philosopher Christopher Lebron has theorized the ways that privileged whites often subscribe to legitimizing myths in order to maintain their self-conception as good people in a racist society. Presenting oneself as a martyr to the cause of a cherished ideal like freedom of speech is one way to do that. It simultaneously serves to discredit the people calling for change — including, in this case, the resignations of the Christakises from Silliman College. (Not just on the basis of the email, but because of growing discontent with their narrow focus on freedom of speech to the exclusion of actually fostering engagement among Silliman residents. In resigning as masters, the Christakises would remain Yale faculty.) Sounding reasonable can be a luxury. Such speech trusts, even presumes, that one's words will be received by a similarly reasonable, receptive, even sympathetic, audience. But didn’t Erika Christakis, and most though not all of her defenders, express their views in a much more reasonable tone of voice than the students protesting? Yes. But sounding reasonable can be a luxury. Such speech trusts, even presumes, that one’s words will be received by a similarly reasonable, receptive, even sympathetic, audience. Oppressed people are often met with the political analogue of stonewalling. In order to be heard, they need to shout; and when they shout, they are told to lower their voices. They may be able to speak, but have little hope of being listened to. The Michigan State University philosopher Kristie Dotson describes this predicament as "testimonial quieting," as the philosopher Rachel McKinnon has helped us to see. When oppressed people speak out — and up, toward those in power — their right to speak may be granted, yet their capacity to know of what they speak doubted as the result of ingrained prejudice. And the way in which they express themselves is often then made the focus of the discussion. So it is not just that these people have to raise their voices in order to be audible; it’s also that, when their tone becomes the issue, their speech is essentially being heard as mere noise, disruption, commotion. Their freedom of speech is radically undercut by what is aptly known as "tone policing."